

# ADEQ

ARKANSAS  
Department of Environmental Quality

September 12, 2014

Wren Stenger  
Director  
Multimedia Planning and Permitting Division  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

RE: Memorandum of Agreement for Implementation and Enforcement of Standards  
Delegated under Section 112 of the Clean Air Act

Dear Ms. Stenger:

Enclosed is the Memorandum of Agreement (MOA) regarding the Delegation of Clean Air Act Section 112 Standards. The development and negotiation MOA has been closely coordinated with Region 6 personnel, primarily Richard Bartley and Richard Barrett.

It is our understanding that with the signature of the MOA, the Delegation of Section 112 Standards previously requested by the Arkansas Department of Environmental Quality can proceed to approval and publication in the Federal Register.

If there should be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Mike Bates  
Chief  
Air Division

Encl

Cc: Tammy Harrelson, Interim Deputy Director  
Stuart Spencer, Legal Policy Advisor  
Tony Davis, Planning Branch Manager, Air Division

Memorandum of Agreement between the Arkansas Department of Environmental Quality and  
the United States Environmental Protection Agency, Region 6  
Regarding the Implementation and Enforcement of Standards Delegated  
Under Section 112 of the Clean Air Act

The purpose of this Memorandum of Agreement (MOA) is to facilitate the straight delegation by the United States Environmental Protection Agency (EPA), Region 6, to the Arkansas Department of Environmental Quality (ADEQ) of certain standards promulgated by EPA under Section 112 of the Clean Air Act (CAA). This MOA sets forth specific expectations and responsibilities of EPA and ADEQ, and describes the mechanism to be used by ADEQ for the implementation and enforcement of the delegated standards. It also describes the procedure for cooperative information sharing between ADEQ and EPA Region 6. ADEQ and EPA recognize that timely implementation and enforcement of the delegated standards is vital to the success of both the Section 112 and Title V programs. ADEQ and EPA Region 6 affirm their commitment to an effective partnership and agree to review this MOA as the need arises.

### Scope

ADEQ has requested EPA's delegation of authority and approval of the mechanism used for the implementation and enforcement of certain emission standards and other requirements promulgated by EPA under CAA section 112 (codified at 40 C.F.R. Part 63, hereinafter referred to as "Part 63 standards"). ADEQ has not requested, and at this time does not intend to request, delegation of the accidental release program under CAA section 112(r) nor Part 63 standards applicable to area sources not required to obtain a Title V permit. This MOA addresses only those provisions and responsibilities for which ADEQ has requested EPA's approval.

### Background

CAA section 112 requires EPA to develop National Emission Standards for Hazardous Air Pollutants (NESHAPs), and CAA section 112(l) authorizes EPA to delegate the authority for the enforcement and implementation of Part 63 standards promulgated under CAA section 112 to any State that applies for such delegation which demonstrates that it has in place a program that meets the criteria set forth in CAA section 112(l) and its implementing regulations at 40 C.F. R. § 63.91.

In a Federal Register notice dated September 8, 1995, EPA Region 6 promulgated final interim approval of the Arkansas Operating Permit Program. *See* 60 Fed. Reg. 46771. EPA granted full approval of the Arkansas Operating Permit Program on October 9, 2001. *See* 66 Fed. Reg. 51312. As such, ADEQ met the up-front approval criteria for delegation of unchanged Part 63 standards, as set forth in 40 C.F.R. § 63.91(d). By letter dated July 7, 2010, ADEQ requested EPA's delegation of authority and approval of the mechanism it intends to use to implement and enforce the delegated Part 63 standards – that is, through its EPA-approved Title V Operating Permit Program (the effective date of the latest approved revision is November 8, 2004; *see* 40 C.F.R. Part 70, Appendix A). The Operating Permit Program incorporates all applicable CAA requirements and designated State-only requirements within one permit (hereinafter referred to as the "Title V permit"). As such, ADEQ has requested EPA's approval of its mechanism to implement and enforce Part 63 standards applicable to Title V sources (hereinafter, "delegated Part 63 standards"), by including such standards in Title V permits when they are issued or updated, as more specifically described in this MOA. The authority to act on ADEQ's request has been delegated to the Director of the Multimedia Planning and Permitting Division in EPA Region 6.

## Policy Statement

ADEQ and EPA Region 6 hereby establish a process for the implementation and enforcement of the delegated Part 63 standards. ADEQ plans to implement and enforce the delegated Part 63 standards pursuant to this MOA through its EPA-approved Title V Operating Permit Program. Pursuant to Arkansas Code Annotated § 8-4-302 *et seq.*, ADEQ has authority to include Part 63 standards in Title V permits for existing sources and new sources.

Both ADEQ and EPA Region 6 recognize that ADEQ's ability to implement and enforce a delegated Part 63 standard in a timely manner will depend upon its having access to information regarding such standard prior to the final promulgation of such standard. Therefore, the process should be an interactive, information-sharing process that will begin prior to the promulgation by EPA of any new or revised Part 63 standard.

EPA Region 6 retains responsibility for implementation and enforcement of Part 63 standards for non-Title V sources, and Title V sources for which ADEQ may decline to accept implementation and enforcement authority or relinquish that authority. ADEQ must ensure that all applicable Part 63 standards are included in the appropriate federally enforceable permit.

EPA Region 6 and ADEQ agree to implement the following procedures:

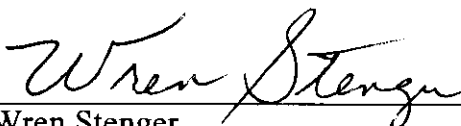
- I. Within 180 days of final signature of this MOA, EPA Region 6 intends to send a Direct Final Rule and a Proposed Rule to the office of the Federal Register in regard to EPA's delegation of authority and approval of ADEQ's implementation and enforcement mechanism for the delegated Part 63 standards.
- II. Prior to final promulgation of a new or revised Part 63 standard, EPA Region 6 agrees to provide ADEQ with any available information regarding the potential timing for issuance specific to such standard.
- III. Within forty-five (45) days of EPA's final promulgation of a new or revised Part 63 standard, ADEQ shall notify EPA Region 6 if it does *not* intend to implement and enforce such standard, as it applies to sources subject to the EPA-approved Title V Operating Permit Program in Arkansas.
- IV. Following final promulgation by EPA of a new or revised Part 63 standard, EPA Region 6 agrees to provide ADEQ with:
  - A. All applicable forms and other supporting resources, if available; and
  - B. Access to the applicable Maximum Achievable Control Technology (MACT) database. See [www.epa.gov/ttn/atw/eparules.html](http://www.epa.gov/ttn/atw/eparules.html)
- V. Implementation and Enforcement. The implementation and enforcement of the delegated Part 63 standards will be carried out as follows:
  - A. After the effective date of the federal rulemaking referenced in I. above, ADEQ will have the authority to implement and enforce the delegated Part 63 standards upon incorporation into a source's Title V permit. The existing Part 63 standards for which

ADEQ has requested EPA's approval to implement and enforce are attached as Appendix A to this MOA.

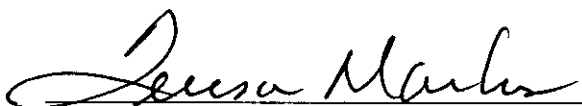
- B. Upon EPA's promulgation of a new or revised Part 63 standard that is applicable to Title V sources, the implementation and enforcement of such standard shall be automatically delegated to ADEQ upon incorporation of such standard into the source's Title V permit, consistent with the timeframe specified in Arkansas Pollution Control & Ecology Commission Reg. No. 26.1011 for reopening and revising permits. Revisions to the Title V permits by ADEQ shall be made no later than the first compliance date of that standard.
  - C. For the construction of a new source that will be subject to an existing Part 63 standard, ADEQ will incorporate the Part 63 standard into the applicable federally-enforceable permit.
  - D. For all existing sources subject to delegated Part 63 standards that have already been promulgated as of the date of this MOA, ADEQ shall incorporate the requirements of such standards into the source's Title V permit. ADEQ agrees to use its best efforts to issue all Title V permits for sources subject to 2, 4, 7, and existing 10-year MACT standards six (6) months from the effective date of the Final Rule addressed at I. above.
- VI. Timing and Scope. The issuance of the Title V permit incorporating a delegated Part 63 standard is the mechanism whereby ADEQ's implementation and enforcement authority for the delegated standard becomes effective for that source. The implementation and enforcement authorities for delegated Part 63 standards include those provisions found in 40 C.F.R. § 63.91(g), as amended by 65 Fed. Reg. 55810 (September 14, 2000), and by any subsequent amendments thereto which are identified as Category I Authorities.
- VII. Relinquishing Authority. Upon written notification to EPA Region 6, ADEQ may relinquish the implementation and enforcement authority for a delegated Part 63 standard or portion thereof. ADEQ relinquishment of such authority may include, but is not limited to: EPA's amendment of the delegated Part 63 standard; resource constraints; and changes in EPA policy or interpretation of the delegated Part 63 standard. ADEQ shall provide EPA Region 6 a reasonable period of time between the written notice and the date that ADEQ relinquishes its authority, and this period of time should be no less than 30 days.
- VIII. ADEQ shall be responsible for implementing and enforcing the delegated Part 63 standards throughout the State of Arkansas. Such implementation and enforcement shall include, as appropriate:
- A. Distribution of initial notification forms provided by EPA Region 6 to potentially affected sources;
  - B. Receiving initial notifications and compliance certifications from affected sources;
  - C. Issuing or revising Title V permits for affected sources as needed to include Part 63 standards;
  - D. Specifying Part 63 standards as the underlying authority for permit terms and conditions, and assuring compliance with the same through implementation of the EPA-approved Title V Operating Permit Program for affected sources;

- E. Pursuing timely and appropriate enforcement actions, including the assessment of civil penalties, for violations of the delegated Part 63 standards included in Title V permits issued by ADEQ;
- F. ADEQ shall renew the Title V permits in a timely manner so as not to allow any time period during which a source subject to a delegated Part 63 standard will be without a permit containing the requirements of the delegated Part 63 standard. ADEQ shall immediately notify EPA Region 6 in writing in the event that ADEQ is not able to timely reissue a Title V permit;
- G. After a delegated Part 63 standard has been incorporated into a source's Title V permit, all of the information required pursuant to the general provisions and the relevant subparts of the delegated Part 63 standards should be submitted by sources directly to the ADEQ. The ADEQ is the primary point of contact with respect to delegated Part 63 standards which have been incorporated in a source's Title V permit. For delegated Part 63 standards incorporated into a source's Title V permit, Region 6 waives the requirement that notifications and reports be submitted to EPA, in addition to ADEQ, in accordance with 40 C.F.R. §§ 63.9(a)(4)(ii) and 63.10(a)(4)(ii). Until a delegated Part 63 standard has been incorporated into a source's Title V permit, the source must continue to submit all appropriate information to EPA; and
- H. Following the effective date of this delegation, ADEQ will only need to periodically submit a written request to EPA, Region 6, to update its approval of the delegation of authority to implement and enforce new or revised Part 63 standards through its approved Title V permitting program. In such request, ADEQ will reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. EPA will respond in writing to the request and take action in the Federal Register to inform the public and affected sources of EPA's decision and to update 40 C.F.R. § 63.99(a)(4), amending the Arkansas table of delegated Part 63 standards being implemented and enforced by ADEQ.
- IX. Following delegation of authority to ADEQ by EPA, nothing in this MOA or in any delegation of Part 63 standards or requirements shall prohibit EPA from enforcing any applicable emission standard or requirement under the CAA.
- X. ADEQ will obtain concurrence from EPA Region 6 on any matter involving interpretation of Section 112 of the CAA or 40 C.F.R. Part 63, to the extent that interpretation, administration, or enforcement of those provisions are not covered by current EPA determinations or guidance.
- XI. At the request of the ADEQ on a case-by-case basis following the effective date of this agreement, EPA Region 6 shall use its best efforts to submit to ADEQ, in electronic format, a copy of each report, notification, or written request that has been submitted to EPA Region 6 by a facility in Arkansas in accordance with a Part 63 standard. EPA Region 6 will also use its best efforts to submit to ADEQ, at the request of ADEQ on a case-by-case basis following the effective date of this MOA, a copy of any written response made by EPA Region 6 to aforementioned reports, notifications, or written requests.

The above agreement is effective upon the date the last signature required by this document is affixed. Any modifications of this document shall be made in writing only and upon approval by EPA Region 6 and ADEQ. This agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against ADEQ or EPA, their officers or employees, or any other person. This agreement does not direct or apply to any person outside of ADEQ and the EPA. Nothing in this agreement shall be construed to restrict in any way the authority of the EPA or ADEQ to fulfill their respective responsibilities under State and/or Federal law.

  
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Wren Stenger  
Director  
Multimedia Planning and  
Permitting Division  
United States Environmental Protection Agency

9/18/14  
Date

  
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Teresa Marks  
Director  
Arkansas Department of Environmental Quality

9/11/14  
Date

APPENDIX A

DELEGATION STATUS FOR PART 63 STANDARDS - STATE OF ARKANSAS<sup>1</sup>

The symbol "X" in the Table below represents the 40 C.F.R. Part 63 subparts for which ADEQ is requesting delegation of authority to implement and enforce for sources subject to the Title V permitting requirements.

SUBPART	SOURCE CATEGORY	ADEQ <sup>2</sup>
A	General Provisions	X
F	Hazardous Organic NESHAP (HON) – Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON - SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON - Equipment Leaks	X
I	HON – Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	<sup>3</sup>
K	(Reserved)	.....
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	.....

Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	.....
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	.....
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	.....
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X



JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills	X
NN	(Reserved)	.....
OO	Tanks-Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	X
TT	Equipment Leaks – Control Level 1	X
UU	Equipment Leaks – Control Level 2 Standards	X
VV	Oil – Water Separators and Organic – Water Separators	X
WW	Storage Vessels (Tanks) – Control Level 2	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ-BBB	(Reserved)	.....

CCC	Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	.....
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	.....
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	.....
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries - Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X

VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	.....
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products	X <sup>4</sup>
EEEE	Organic Liquids Distribution	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck (Surface Coating)	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Surface Coating of Plastic Parts and Products	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X

SSSS	Surface Coating of Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Products Manufacturing	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Rubber Tire Manufacturing	X
YYYY	Stationary Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAAA	Lime Manufacturing Plants	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDDD	Industrial/ Commercial/Institutional Boilers and Process Heaters	X <sup>5</sup>
EEEEE	Iron and Steel Foundries	X
FFFFF	Integrated Iron and Steel	X
GGGGG	Site Remediation	X
HHHHH	Miscellaneous Coating Manufacturing	X
IIIII	Mercury Cell Chlor-Alkali Plants	X
JJJJJ	Brick and Structural Clay Products Manufacturing	<sup>6</sup>
KKKKK	Clay Ceramics Manufacturing	<sup>6</sup>

LLLLL	Asphalt Roofing and Processing	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X
OOOOO	(Reserved)	.....
PPPPP	Engine Test Facilities	X
QQQQQ	Friction Products Manufacturing	X
RRRRR	Taconite Iron Ore Processing	X
SSSSS	Refractory Products Manufacture	X
TTTTT	Primary Magnesium Refining	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	X <sup>7</sup>
VVVVV	(Reserved)	.....
WWWWW	Hospital Ethylene Oxide Sterilizers	.....
XXXXX	(Reserved)	.....
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X
ZZZZZ	Iron and Steel Foundries Area Sources	.....
AAAAA	(Reserved)	.....
BBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	.....
CCCCC	Gasoline Dispensing Facilities	.....
DDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	.....

EEEEEE	Primary Copper Smelting Area Sources	X
FFFFFF	Secondary Copper Smelting Area Sources	X
GGGGGG	Primary Nonferrous Metals Area Sources: Zinc, Cadmium, and Beryllium	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	.....
IIIII	(Reserved)	.....
JJJJJ	Industrial, Commercial, and Institutional Boilers: Area Sources	.....
KKKKKK	(Reserved)	.....
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	.....
MMMMMM	Carbon Black Production Area Sources	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	.....
PPPPPP	Lead Acid Battery Manufacturing Area Sources	.....
QQQQQQ	Wood Preserving Area Sources	.....
RRRRRR	Clay Ceramics Manufacturing Area Sources	.....
SSSSSS	Glass Manufacturing Area Sources	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	.....
UUUUUU	(Reserved)	.....
VVVVVV	Chemical Manufacturing Area Sources	X
WWWWWW	Plating and Polishing Operations Area Sources	.....

XXXXXX	Nine Metal Fabrication and Finishing Categories Area Sources	.....
YYYYYY	Ferroalloys Production Facilities Area Sources	.....
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	.....
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	.....
BBBBBBB	Chemical Preparations Industry Area Sources	.....
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	.....
DDDDDDD	Prepared Feeds Manufacturing Area Sources	.....
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	.....
FFFFFFF	Reserved	.....
GGGGGGG	Reserved	.....
HHHHHHH	Polyvinyl Chloride and Copolymers Production	X

<sup>1</sup> Program delegation to be carried out by Arkansas Department of Environmental Quality (ADEQ)

<sup>2</sup> Authorities which may not be delegated include: §63.6(g), Approval of Alternative Non-Opacity Emission Standards; §63.6(h)(9), Approval of Alternative Opacity Standards; §63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; §63.8(f), Approval of Major Alternatives to Monitoring; §63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under “Delegation of Authority”) that cannot be delegated.

<sup>3</sup> This subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004).

<sup>4</sup> This subpart was issued a partial vacatur on October 29, 2007 (72 FR 61060) by the United States Court of Appeals for the District of Columbia Circuit.

<sup>5</sup> Final Rule. See 78 FR 7138 (January 31, 2013).

<sup>6</sup> This subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Sierra Club v. EPA*, 479 F. 3d 875 (D.C. Cir. 2007).

<sup>7</sup> Initial Final Rule, 77 FR 9304 (February 16, 2012). Final on reconsideration of certain new source issues, 78 FR 24073 (April 24, 2013). Portions of this subpart are in proposed reconsideration pending final action. See 78 FR 38001 (June 25, 2013).